

PRESENTATION OF PROSECUTION CASE

The trial counsel made (an) (no) opening statement.

The following witnesses for the prosecution were sworn and testified in substance as follows: ¹

¹ Unless otherwise prescribed by departmental regulations, the convening authority may direct that testimony be recorded verbatim if a reporter is present. If a witness testifies through an interpreter, that fact will be shown. Additional testimony will be shown on blank pages immediately following this page.

PRESENTATION OF DEFENSE CASE

The defense counsel made (an) (no) opening statement.

The following witnesses for the defense were sworn and testified in substance as follows:

The prosecution made (an) (no) argument on findings.

The defense made (an) (no) argument on findings.

The prosecution made (a) (no) closing argument.

The (military judge) (president) instructed the court in accordance with RCM 920 including the elements of each offense, the presumption of innocence, reasonable doubt, and burden of proof as required by Article 51(c) (and affirmative defenses). ¹

Neither prosecution nor defense having anything further to offer, the court was closed at _____ hours, _____, _____ for deliberation. Thereafter the court opened ² at _____ hours with all parties present. The president announced that, the accused was found:

The military judge announced the following general (and specific) findings (and directed that _____ be appended to the record as Appellate Exhibit _____) (filed an opinion or memorandum of decision, Appellate Exhibit _____, a copy of which was furnished to counsel for both sides) (and stated that the special findings (and opinion or memorandum of decision) would be furnished to the reporter prior to authentication for insertion in the record as Appellate Exhibit _____):

¹ In a trial by the military judge alone, there would be no instructions given. Any request for special finding should be summarized, and if submitted in writing, the request should be attached as an appellate exhibit.

² "Parties to the trial" must be accounted for when court opens after being in closed session, but the accounting need not be shown in a summarized record. After a recess or adjournment, record should show, "All parties to the trial who were present when the court (adjourned) (recessed) were again present (except _____)." The reason for the subsequent absence of any member who was present at assembly must be shown.

The trial counsel read the data as to pay, service, and restraint of the accused as shown on the charge sheet.
The defense counsel stated that (the data were correct) ().

(The trial counsel had no evidence of previous convictions to submit.) (The attached evidence of previous convictions was offered) (and admitted) (in evidence as Prosecution Exhibit _____). The defense counsel stated that (the accused had no objection to the evidence of previous convictions.) ()

(The trial counsel offered the attached service records (and they were admitted) in evidence as Prosecution Exhibit(s) _____. The defense counsel stated that (the accused had no objection.) ()).

The trial counsel presented the following additional (documents) (real evidence) (and) (testimony) in aggravation:

After the accused was advised by the (military judge) (president) of his/her right to present evidence in extenuation or mitigation, including the right to remain silent or to make a sworn or unsworn statement, (the defense counsel stated that he/she had nothing further to offer). (The defense presented the following matters):

The prosecution made (an) (no) argument on sentence.

The defense made (an) (no) argument on sentence.

The (military judge) (president) instructed the court that the maximum permissible punishment which could be adjudged for the offense(s) of which the accused had been found guilty was:

and further instructed with respect to the specific facts of this case in accordance with RCM 1005(e). ¹

There were no objections to the instructions given nor requests for additional instructions, except as indicated below.

¹ If the military judge announces what he/she considers to be the maximum permissible punishment in a case tried by him/her alone, the record should reflect the stated maximum.

Neither the prosecution nor the defense having anything further to offer, the court was closed at _____ hours, _____, _____ for deliberation on the sentence. Thereafter, the court opened at _____ hours, _____, _____ with all parties present.

The president announced that, the accused was sentenced to:

The court opened at _____ hours, _____, _____ with all parties present.

The military judge informed the accused that the court sentenced him/her to: ¹

¹ Use if trial by military judge alone.

The military judge examined Appellate Exhibit _____. The military judge stated that, based on the sentence adjudged, the convening authority (was obligated, under the agreement to approve no sentence in excess of _____) (could approve the sentence adjudged if the convening authority so elected) (_____). ¹
(Other)

The military judge informed the accused of: the right to submit matters to the convening authority to consider before taking action; (the right to have the case examined in the office of the Judge Advocate General and the effect of waiver or withdrawal of such right); the right to apply for relief from the Judge Advocate General; and the right to the advice and assistance of counsel in the exercise of the foregoing rights or any decision to waive them.

The court adjourned at _____ hours, _____, _____.

¹ Use only in cases with a pretrial agreement.

AUTHENTICATION OF RECORD OF TRIAL

in the case of

(Military Judge) ¹

_____, _____

I have examined the record of trial in the foregoing case.

(Defense Counsel)

_____, _____

¹ Delete and insert "President" for special court-martial without a military judge.

INSTRUCTIONS FOR PREPARING AND ARRANGING DD FORM 491, RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1984, Appendix 13, or applicable departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized. When an Article 39(a) session is held in a special court-martial with a military judge, DD Form 491-1 should be used and combined with DD Form 491 to complete the record of trial. Those procedures covered at the Article 39(a) session and summarized in DD Form 491-1 will not be resummarized in DD Form 491.

DELETIONS - In preparing the record, inapplicable words of the printed text must be deleted. Deletions may be made by striking over the inapplicable word or phrase, or by ruling it out in ink. When several consecutive lines are to be deleted, a single line, ruled in ink, from upper left to lower right will suffice. No deletion or remark is necessary when there are no exceptions after an item ending "except as indicated below."

RECORDING TESTIMONY - A summarized record need contain only a summarized report of the testimony.

COPIES - See MCM, 1984, RCM 1103(g) for summarized record. The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to a judge advocate for review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 5, 7, and 13e will be inserted by the convening or reviewing authority, as appropriate, and items 8 and 12 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DD Form 491.
2. Briefs of counsel submitted after trial, if any (Article 38(c)).
3. DD Form 494, "Court-Martial Data Sheet."
4. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is of a GCM and in 4 copies if it is of a SPCM.

5. When required, signed review of reviewing judge advocate, in duplicate, together with all clemency papers, including clemency recommendations by court members.

6. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

7. DD Form 458, "Charge Sheet" (unless included at the appropriate place in a summarized record).

8. Congressional inquiries and replies, if any.

9. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

10. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

11. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

12. Records of former trials.

13. Record of trial in the following order:

a. Errata sheet, if any.

b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.

c. Record of proceedings in court.

(1) Record of Article 39(a) session at appropriate place in proceedings.

d. Authentication sheet, followed by Certificate of Correction, if any.

e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.

f. Exhibits admitted in evidence.

g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.

h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.